

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In Re: Bard IVC Filters) MD-15-02641-PHX-DGC
Products Liability Litigation)
) Phoenix, Arizona
) May 15, 2018
)
Doris Jones, an individual,)
)
Plaintiff,)
) CV-16-00782-PHX-DGC
v.)
)
C.R. Bard, Inc., a New Jersey)
corporation; and Bard Peripheral)
Vascular, Inc., an Arizona)
corporation,)
)
Defendants.)

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DAY 1 - A.M. SESSION

(Pages 1 - 124)

Official Court Reporter:
Patricia Lyons, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Ste. 312
401 West Washington Street, SPC 41
Phoenix, Arizona 85003-2150
(602) 322-7257

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared with Computer-Aided Transcription

DIRECT EXAMINATION (CONT'D) - ROBERT CARR

09:02:11 1 A Yes.

2 Q Based on your 20-plus years of experience working with IVC
3 filters, do you consider the Simon Nitinol filter a reasonable
4 alternative for a patient who would customarily receive a
09:02:21 5 retrievable filter?

6 A No.

7 Q And why is that?

8 A Because it's not retrievable.

9 Q In your experience, what are the types of patients who
09:02:30 10 typically receive a permanent filter or the Simon Nitinol
11 filter?

12 A Nowadays they'd be much older patients who may not have a
13 long life expectancy. They might be terminal in their
14 disease and really have no chance at any time of potentially
09:02:50 15 needing the filter removed.

16 Q Does Bard still sell the Simon Nitinol filter in the
17 United States?

18 A No, we don't.

19 Q And why did Bard stop selling that filter?

09:03:02 20 A The -- it didn't sell very well.

21 MR. NORTH: If we could bring up Exhibit 7900,
22 please.

23 BY MR. NORTH:

24 Q Do you recognize this exhibit, Mr. Carr?

09:03:17 25 A Yes.

DIRECT EXAMINATION (CONT'D) - ROBERT CARR

09:03:18 1 Q What is this?

2 A It's the sales from 2002 to through September of 2016 of
3 our retrievable filters and the Simon Nitinol filter.

4 Q And was this prepared at Bard as part of the business?

09:03:34 5 A Yes.

6 MR. NORTH: Your Honor, at this time we would tender
7 Exhibit 7900.

8 MR. O'CONNOR: No objection, Your Honor.

9 THE COURT: Admitted.

09:51:03 10 (Exhibit 7900 admitted.)

11 MR. NORTH: Could we display, Your Honor?

12 THE COURT: Yes.

13 BY MR. NORTH:

14 Q And does this demonstrate the low sales of the
09:03:51 15 Simon Nitinol filter as compared to Bard's retrievable filters
16 over this 15-years or 14-year period?

17 A Yes, it does.

18 Q Now, in your experience, why were Simon Nitinol filters
19 sales so low compared to the sales of the retrievable filters?

09:04:11 20 A Because the reality of it is, is the retrievable filters
21 are permanent, and if you could put a filter in that could
22 potentially be removed, because you don't always know if a
23 patient will need a filter forever, why wouldn't you do that.
24 And the Simon Nitinol filter had some nuances to it, if you
09:04:34 25 will, from a delivery point of view. And it was seen as old.

11:03:49 1 spent the better part of the three-week trial trying to
2 promote to you the Simon Nitinol filter as a far superior
3 filter to any of the retrievable filters and as a viable
4 alternative that should have been implanted in patients like
11:04:04 5 Mrs. Jones.

6 But what did the evidence say in that regard? The
7 evidence showed that her doctor, Dr. Avino, wanted to implant
8 a retrievable filter. If that's the case, the Simon Nitinol
9 filter is not a candidate.

11:04:26 10 You heard the testimony yesterday of Dr. Scott
11 Trerotola from the University of Pennsylvania. He said the
12 folks in his practice call it is Simon frightenol.

13 You heard the testimony of Dr. Christopher Morris, an
14 interventional radiologist with a long history of use of all
11:04:48 15 sorts of filters. And he said that contrary to what the
16 plaintiffs have claimed in this courtroom, there are a number
17 of complications that have been associated with the
18 Simon Nitinol filter.

19 What is the clearest evidence, though, of why the
11:05:00 20 Simon Nitinol filter is not at issue and is not a viable
21 alternative? I would submit it's the chart we showed you
22 yesterday morning with Mr. Rob Carr, showing the sales over
23 the last 13 years. The red line are Bard's retrievable
24 filters. The blue line the is Simon Nitinol filter. The fact
11:05:25 25 of the matter is that doctors in this country, just like

11:05:29 1 Mrs. Jones' doctor, Dr. Avino, do not want to implant
2 permanent filters. They want retrievable filters. And
3 because of that, the Simon Nitinol filter became a dinosaur.
4 It's no longer on the market for that reason.

11:05:44 5 In today's medical world, an old permanent filter
6 like the Simon Nitinol filter is not a viable alternative.

7 Ladies and gentlemen, I would submit that another
8 thing that is not at issue in this case is the FDA warning
9 letter. I am really glad that you got to see this letter
11:06:08 10 because I think it disproves what we have heard from the
11 plaintiffs throughout this case. They tell that you the FDA
12 clearance process is simply an honor system. They try to make
13 it sound like the FDA just rubber-stamps these applications,
14 contrary to all the evidence that shows to the contrary.

11:06:32 15 What did the warning letter show you? And the
16 testimony of Mr. Modra? Bard Peripheral Vascular has been
17 inspected four times by the FDA on routine inspections in the
18 last decade alone. Every aspect of the company.

19 You saw yesterday where Mr. Modra explained when the
11:06:55 20 FDA inspectors came, they want to see the design files for
21 these filters and other devices. They're looking at complaint
22 handling. They're looking at everything.

23 This is not an honor system. This is an agency
24 proactively keeping track of medical device manufacturers.
11:07:14 25 Bard and all the others.